IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6455 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIR OF MAHANT SHREE SHYAMDASJI HARIDASJI

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner

Mr. Sudhansu S. Patel, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 14/09/2000

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner prays for the issuance of a writ of certiorari or any other appropriate writ quashing and setting aside the order dated 25th September 1989 passed by the Special Mamlatdar, and also the judgment and order dated 26th March 1991 passed by the Gujarat Revenue Tribunal in appeal with regard to the annuity.

2. The petitioner is the Mahant of Kabirpanth Jagir at Bhuj which is a Dharmada Jagir under Section 12 of the Bombay Inams (Kutch Area) Abolition Act, 1958, Bombay Act No. XCVIII of 1958 (for short "the Act"). The Act came into force on 30th December 1958. At that time the Jagir (Estate) of the Trust was under the management of the Mamlatdar at Mandvi. As the estates of the Trust i.e., Inams were being abolished under the Act the petitioner losing the properties filed an application for annuity (varshan) under Section 12 of the Act. That application was registered as Case No. 19/60. While hearing that application the Mamlatdar could note that not all the properties but agricultural lands bearing Survey Nos. 332 and 368 were situated within the sim of village Dahisara and not village Dhunai. As these two fields were not situated within his jurisdiction he with regard to those two lands refused to award any annuity and partly rejected the application, but allowed the application with regard to rest of the properties. He also directed the petitioner to apply afresh before the Special Mamlatdar at Bhuj for compensation with regard to those two Survey Nos. 332 and 368. The petitioner was under the impression that those two fields were in fact not situated within the sim of Village Dahisara and there was some mistake in the record because of the boundary dispute qua villages Dhunai and Dahisara being situated close to each other. The petitioner therefore filed the application in the office of the District Inspector of Land Records for necessary clarification. The District Inspector of Land Records, and finally the Deputy Secretary, Revenue Department on 30th November 1976 ordered that both the Survey numbers were situated within the sim of village Dhunai and not Dahisara. Necessary correction in the record was then made. After such correction was made in the record, the petitioner found that it would be futile to move the Special Mamlatdar at Bhuj. The only way open to him was to again file an application for review before the Mamlatdar at Mandvi. Hence, he filed the application on 4th February 1989 for getting the annuity qua the fields Survey Nos. 332 & 368. The Mamlatdar at Mandvi without giving an opportunity of being heard and without holding any regular inquiry straightway rejected the application on the ground of limitation and sent a letter of intimation dated 29th May 1989 to the petitioner intimating that the application was barred by the period of limitation. The petitioner thereafter filed the appeal in Gujarat Revenue Tribunal being No. TEN-AK 6 of 89. The appeal also came to be rejected on 26th March 1991 agreeing with the view of the Mamlatdar. It is against these orders the present

application is filed calling in question the legality and validity of those orders.

3. It is the contention of the learned advocate representing the petitioner that the Mamlatdar arbitrarily passed the order. He ought to have held regular inquiry after the application for review was filed and ought to have given reasonable opportunity to submit. As that was not done, the orders passed are bad in law and required to be quashed. In reply to such contention ld. A.G.P. Mr. Sudhansu Patel submits that there is neither jurisdictional error nor any procedural error. On the question of fact this Court cannot interfere, and even if there is simple error of law the High Court cannot upset the order as it does not sit in appeal. Hence it is not open to this Court to re-weigh or review. Even if this Court prefers to upset the order, the authority will have to at last pass the same order as no other view is possible, and so it would be futile to set aside the order and direct the Mamlatdar to hear again and decide.

4. It may be made clear when this Court can exercise Writ Jurisdiction. It cannot only in the cases where there is Jurisdictional error or procedural error, but also in the cases where the fundamental rights are violated, or enforcement of a legal right is necessary, or the authority disregarding the facts and materials on record, arbitrarily passed the order leading to miscarriage of justice, or authority has acted not in conformity with the principles of natural justice, or it has decided on extraneous consideration, or has passed the order in bad faith, or the order is perverse or unreasonable or absurd, or interference in the interest of justice is necessary so as to do complete justice, or the question of consideration of statutory provisions is involved, or constitutional point is raised, or question relating to statutory duty or obligation is involved, or compliance or implementation of the order is difficult or injurious or confusing or embarrassing or places the party between the devil and the deep sea.

5. It is the cardinal principle of law that no one can be condemned unheard. The authority who has to pass the order, is bound to keeping in mind the principles of natural justice, give an opportunity to the party likely to be affected by the order and pass appropriate order in accordance with law considering the rival contentions and materials placed before him. If opportunity to submit is not given, it would be the procedural error and order passed will be vitiated and being bad in law the same

will have to be struck down. In the case on hand, the Mamlatdar, Mandvi, after the review application was filed before him, did not hold any regular enquiry and even did not grant an opportunity to the petitioner to submit on permissible grounds inclusive of limitation though he was to be affected and straightway rejected the application holding that it was barred by the period of limitation prescribed in the Act. Had the opportunity been given the petitioner might have shown how his application was within time and acceptable. For want of the opportunity he was helpless. Thus the petitioner is condemned unheard setting at naught the principle of natural justice. The order passed by the Mamlatdar, Mandvi, being arbitrary on this count is bad in law and is required to be quashed and set aside. If ultimately there is a possibility of passing the same order the same cannot, in view of such infirmity, be the ground to dismiss the petition as canvassed.

6. The Tribunal also in appeal, did not in right perspective, deal with the point, and leaving out of consideration the point regarding principle of natural justice & error committed by Mamlatdar, virtually in a mechanical manner confirmed the Mamlatdar's order. The order of the Tribunal is also required to be upset.

7. For the aforesaid reasons, this application is allowed. The judgment and order passed by the Tribunal on 26th March 1991 and the order passed by the Mamlatdar on 29th May 1989 are hereby quashed and set aside. The Mamlatdar at Mandvi is hereby directed to hear the review application afresh affording reasonable opportunity to the petitioner and dispose the same of in accordance with law. Rule to the aforesaid extent is made absolute.
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